IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.989 OF 2007.

Shevanta Namdeo Nile ...Appellant.

Versus

Sidhawa Vitthal Nile & Ors. ...Respondents.

Shri Uday Warunjikar for the Appellant.
Shri T.S.Ingale for the Respondent No.1.
Shri Amit Sale for the Respondent No.2.
Shri Raju Yamgar h/f Shri Prabhakar Jadhav for the Respondent Nos.4 and 5.

CORAM : ABHAY S.OKA, J.
DATED : 17th December, 2007.

P.C.:

1. Heard learned advocate appearing for the appellant. The appellant is the original plaintiff. According to the appellant the suit property was purchased by her father in the name of her mother on 10th April, 1964. The father of the appellant died in the year 1981 and the mother of the appellant died in the year 1985. The mother was survived by two daughters namely, the appellant and the first respondent. It appears that the mother had executed a Will in favour of the second respondent who is the daughter of the first respondent. The suit was filed by the appellant claiming one half share in the suit property. By way of defence, the first and second respondents had set up last Will of the deceased mother by contending that the

deceased mother was the exclusive owner of the suit property and therefore, the property has been bequeathed by her in favour of the second respondent.

2. The submission of the learned advocate for the appellant is that before the trial Court reliance was placed by the appellant on various suspicious circumstances relating to execution of the Will by the deceased mother. He submitted that none of the said circumstances have been dealt with by the Appellate Court.

3. He submitted that the specific case of the appellant was that the mother could not have purchased the suit property and it was purchased by the deceased father by paying consideration from his own income. He submitted that on this aspect there are no findings recorded by the courts below. He, therefore, submitted that the courts below have committed an error by dismissing the suit filed by the appellant.

4. I have perused the impugned judgments. The perusal of the judgment of the Appellate Court shows that the said Court has referred to the oral evidence adduced by the parties. After considering the oral evidence, the Appellate Court has recorded a general

agreement with the findings recorded by the trial Court. The Appellate Court observed that the evidence of the scribe of Will and the evidence of the two attesting witnesses is analysed closely, it is clear that same does not suffer from infirmities.

5. I have perused the evidence of the appellant. There is nothing in evidence to substantiate existence of suspicious circumstances as regards execution of the Will. There is nothing in the said evidence to show that the deceased father purchased the suit property from his own income. In the cross-examination of the first defendant mere suggestion has been given to her that due to advanced age and sickness, the deceased mother was not in position to move. The first respondent stated that the deceased was very shrewd and used to listen to no one. While confirming the judgment of the trial Court, it is well settled that it is not necessary for the Appellate Court to specifically deal with each and every finding recorded by the trial Court. The judgment of the Appellate Court must show that the said Court has considered the oral and documentary evidence on record and it is suffice to record general agreement with the findings recorded by the trial Court. After having perused the judgments of the Courts below and the notes of evidence, I find that no substantial

question of law arises. The Second Appeal is accordingly dismissed with no orders as to costs.

JUDGE